



December 4, 2023

Hon. Susan Paradise Baxter
United States Courthouse
17 South Park Row
Erie, PA 16501

Via ECF

***Re: Pennsylvania State Conference of the NAACP, et al. v. Schmidt,
No. 22-339***

Dear Judge Baxter:

Plaintiffs are in receipt of two post-judgment motions filed late Friday afternoon by Intervenor-Defendants Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania, as well as a new proposed intervenor, Towamencin Township candidate Richard Marino (collectively, “the movants”). While Plaintiffs are preparing to respond in due course to these motions within the standard 10-day period set forth in Your Honor’s Practices and Procedures, we write in the interim to oppose the movants’ request that the Court set a response deadline to both motions within 2 business days.

The movants did not consult Plaintiffs about the proposed response deadline of Tuesday, December 5 before filing their motion to intervene and motion for a stay, and they did not file any motion to alter the Court’s standard procedure. Nor did the movants adequately support their request to expedite briefing. They simply state in the text of their motions that “[t]ime is of the essence” and lay out their own preferred sequence of events based on their desire to file an early notice of appeal by December 11, 2023. That date bears no connection to any other deadline under the Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure, the Pennsylvania Election Code, or any date on which official action will be taken in the Towamencin Township Supervisors’ Race. The movants should not be permitted to force other parties into a severely shortened briefing schedule based on their own preferred staging of events.

Moreover, this Court has already entered final judgment while the movants sat on their rights following the Montgomery County Board of Elections’ November 22 decision to count the timely-received mail ballots at issue. If time was indeed of the essence to challenge that decision in federal court, the time to do so would have

been in the days following the Board's decision and prior to the Court's entry of judgment on November 29, 2023. Your Honor provided fair warning of the forthcoming entry of judgment a week prior (*see* Docket Entry, ECF No. 349), and the movants were aware by November 27 that the Board had counted the votes, that they had resulted in a tie in the Towamencin Township Supervisor race, and that the Board would convene a casting of lots on November 30, 2023. Rather than moving prior to the court-ordered deadline for filing motions prior to entry of judgment, the movants made the strategic decision to wait and see whether the ultimate result in the election would favor Mr. Marino before filing these motions the following day. Having wasted at least a week after the County Board's challenged decision to count the votes, the movants should not now be heard to demand responses within 2 days.

Finally, should Your Honor be inclined to expedite briefing on the movants' December 1, 2023 motions despite the movants' failure to justify this request, Plaintiffs ask that the Court set the response deadline to occur no sooner than 5 p.m. on Friday, December 8, 2023.

Sincerely,

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